

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Jeri Johnson,

No. 13-cv-44 (DWF/LIB)

Plaintiff,

**REPORT AND
RECOMMENDATION**

v.

Commercial Recovery Systems, Inc.,

Defendant,

* * * * *

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of cases and upon an assignment made in accordance with 28 U.S.C. 636(b)(1)(A).

Jeri Johnson (Plaintiff) commenced this action on January 4, 2010. (Compl. [Docket No. 1]).

On May 29, 2013, more than 120 days having passed since Plaintiff commenced this action, the Court ordered Plaintiff to provide proof of service on Commercial Recovery Systems, Inc. (Defendant), or to show good cause for an extension of time to do so. (Order [Docket No. 4]). Two days later, on May 31, 2013, Plaintiff filed proof of service on Defendant, showing that Defendant was served on January 16, 2013. (Summons Returned Executed [Docket No. 5]). Consequently, on June 17, 2013, because more than twenty-one (21) days had passed since Defendant was served, and yet Defendant had not filed either an answer or a responsive motion as required by Rule 12, the Court ordered Plaintiff as follows:

Accordingly, counsel for Plaintiff is hereby ordered to:

1. Notify Defendant Commercial Recovery Systems, Inc., that it is required to serve and file a responsive pleading or move for an extension of time to do so;
2. File an application for entry of default unless the required pleading is filed within ten (10) days;
3. Advise the Court in writing of any good cause to the contrary.

If Plaintiff's counsel fails to comply with this order within twenty (20) days of this date, the Court will recommend that his case be dismissed for lack of prosecution.

(Order [Docket No. 6], at 1-2). It has now been more than twenty (20) days, and Defendant still has not filed an answer or responsive motion; yet Plaintiff has neither filed an application for entry of default against Defendant, nor has she advised the Court of any good cause for such failure.

Consequently, the Court finds that Plaintiff has failed to abide by the terms of the Court's Order of June 17, 2013. [Docket No. 6]. Because the Court forewarned Plaintiff of the potential consequences of her failure to abide by the Court's orders, the Court recommends that this action be dismissed for failure to comply with the Court's Order of June 17, 2013, [Docket No. 6], and for lack of prosecution.

Based on the foregoing and all of the files, records and proceedings herein, **IT IS**
HEREBY RECOMMENDED:

1. That Plaintiff's Complaint [Docket No. 1] be **DISMISSED without prejudice**, for failure to comply with the Court's Order of June 17, 2013, [Docket No. 6], and for lack of prosecution.

DATED: July 15, 2013

s/Leo I. Brisbois
LEO I. BRISBOIS
United States Magistrate Judge

NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by July 29, 2013**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for

each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.